

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-42186-2023

Date of Decision: 31.08.2023

Irshad

.... Petitioner

Versus

State of Haryana

.... Respondent

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: - Mr. Brijender Kaushik, Advocate for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

**NIDHI GUPTA, J. (ORAL)**

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in case FIR No. 111 dated 01.05.2023 (Annexure P-1) registered under Sections 363, 366 and 376(2) (n) IPC at Police Station Sadhaura, District Yamuna Nagar.

The aforesaid FIR (Annexure P-1) was registered on the basis of complaint of Kurban S/o Gafoor/brother of the victim which is reproduced as under:-

*“That I am resident of village Pammuwala, Police Station Sadhaura, District Yamuna Nagar, and is a truck driver. In my family there are my father-mother, sisters Suhana, Rukhsana, Praveen and Mehruna. Whereas marriage Mehruna was solemnized in February, 2023 with Shakir son of Sher Mohammad, resident of village Sultanpur, Police Station Raipur Rani, District Panchkula. About a month ago, my sister has returned home to live with us. In the night of 29/30.04.2023, my sister Mehruna when away without informing us, we tried to locate her on our own, but not able to find her till now. Her appearance is fair colour,*

*long face, athletic body, height 4 fee 5 inches, wearing blue colour suit and wearing chappals in feet. I have doubt that my sister Mehruna is enticed away for marriage by Irshad resident of village Gadhauli Majra, Police Station Naraingarh, District Ambala, who is married in our village to Sehrina daughter of Ali Hassan. My sister Mehruna has taken away jewelry and an amount of Rs.50,000/- along with her. It is further prayed that may sister be located and recovered and appropriate legal action be taken against Irshad resident of village Gadhauli Majra, Police Station Naraingarh, District Ambala”.*

Learned counsel for the petitioner, *inter alia*, submits that the petitioner has been falsely implicated in the present case. The aforesaid FIR was registered at the behest of brother of the alleged victim. At the time of alleged incident, the victim was 20 years of age. The allegation against the petitioner is that he had enticed the complainant's sister/victim for marriage. However, the same is not true as the victim has already married to someone else in February, 2023 and, had thereafter, separated from her husband. Learned counsel for the petitioner submits that there are no allegations of rape against the petitioner in the FIR. Even, in the statement of victim dated 16.05.2023 (Annexure P-4) recorded under Section 164 Cr.P.C., the only allegation against the petitioner is that he forcibly took her away. Further, on 18.05.2023, the victim had refused for her medical examination, and had admitted that no rape was committed with her and that she had accompanied the petitioner with her own free will. Copy of said consent refusal dated 18.05.2023 is annexed with the petition as Annexure P-5. Learned counsel states that perusal of the MLR dated 24.05.2023 (Annexure P-10) shows that it is on the said date for the first time that the victim had alleged that sexual assault was committed upon her whereafter her medico-legal examination was conducted. It is submitted that it is

only in her supplementary statement made before the police that she had levelled allegations of rape against the petitioner. The petitioner is in custody since 29.05.2023. He is not involved in any other case. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Thus, it is prayed that petitioner may be released on regular bail.

*Per Contra*, learned counsel for the State has filed custody certificate dated 30.08.2023, which is taken on record, as per which the petitioner has been in custody as an undertrial for a period of 03 months and 01 day. Learned counsel further submits that challan in the present case has been presented on 20.07.2023, however, charges are yet to be framed. The case has recently been committed to the Court of Sessions. She fairly admits that petitioner is not involved in any other case.

Having heard learned counsel for the parties, but without commenting on merits of the case, keeping in view the totality of the facts and circumstances of the case including the fact that there is no other case against the petitioner, as well as the fact that conclusion of trial will take some time, the present petition is **allowed**.

The petitioner-Irshad, is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

31.08.2023  
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( NIDHI GUPTA )  
JUDGE

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable**

**Yes/No**